

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

HOWARD MELNIKOFF
935 Raysilva Circle
Stockton, California 95206
Pharmacist License No. RPH 22900

Respondent.

Case No. 2947

OAH No. N2007010584

DECISION AND ORDER

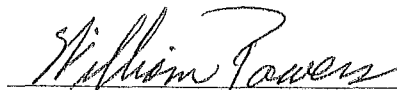
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board, as its Decision in this matter.

This Decision shall become effective on January 16, 2008.

It is so ORDERED December 17, 2007.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



WILLIAM POWERS
Board President

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ARTHUR D. TAGGART
Lead Supervising Deputy Attorney General
3 GEOFFREY S. ALLEN, State Bar No. 193338
Deputy Attorney General
4 California Department of Justice
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-5318
Facsimile: (916) 324-5567
7 E-mail: Geoffrey.Allen@doj.ca.gov

8 Attorneys for Complainant

9 **BEFORE THE**
10 **BOARD OF PHARMACY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:	Case No. 2947
13 HOWARD MELNIKOFF 935 Raysilva Circle 14 Stockton, California 95206 15 Pharmacist License No. RPH 22900	OAH No. N2007010584
16 Respondent.	STIPULATED SETTLEMENT AND DISCIPLINARY ORDER

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
18 above-entitled proceedings that the following matters are true:

19 PARTIES

- 20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of
21 Pharmacy (Board). Complainant brought this action solely in her official capacity and is
22 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
23 by Geoffrey S. Allen, Deputy Attorney General.
- 24 2. Respondent Howard Melnikoff (Respondent) is represented in this
25 proceeding by attorney Gregory Matzen, whose address is Lewis, Brisbois, Bisgaard & Smith,
26 2500 Venture Oaks Way, Suite 200, Sacramento, California 95833.
- 27 3. On or about April 8, 1963, the Board of Pharmacy issued Pharmacist
28 License Number RPH 22900 (License) to Respondent. The License was in full force and effect

1 at all times relevant to the charges brought herein and will expire on July 31, 2009, unless
2 renewed.

3 JURISDICTION

4 4. Accusation No. 2947 (Accusation) was filed before the Board, and is
5 currently pending against Respondent. The Accusation and all other statutorily required
6 documents were properly served on Respondent on December 8, 2006. Respondent timely filed
7 his Notice of Defense contesting the Accusation. A copy of Accusation No. 2947 is attached as
8 exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, discussed with counsel, and fully
11 understands the charges and allegations in the Accusation. Respondent has also carefully read,
12 discussed with counsel, and fully understands the effects of this Stipulated Settlement and
13 Disciplinary Order.

14 6. Respondent is fully aware of his legal rights in this matter, including the
15 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
16 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
17 the right to present evidence and to testify on his own behalf; the right to the issuance of
18 subpoenas to compel the attendance of witnesses and the production of documents; the right to
19 reconsideration and court review of an adverse decision; and all other rights accorded by the
20 California Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
22 each and every right set forth above.

23 CULPABILITY

24 8. Respondent admits the truth of second and third causes for discipline
25 charged and alleged in Accusation. Respondent understands that the first cause for discipline
26 charged and alleged in the Accusation, if proven at a hearing, constitutes an additional cause for
27 imposing discipline upon his License.

28 ///

1 9. For the purpose of resolving the Accusation without the expense and
2 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could
3 establish a factual basis for the first cause for discipline charged in the Accusation and that those
4 charges constitute cause for discipline. Respondent hereby gives up his right to contest that
5 cause for discipline exists.

6 10. Respondent agrees that his License is subject to discipline and he agrees to
7 be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

8 OTHER MATTERS

9 11. The parties understand and agree that facsimile copies of this Stipulated
10 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
11 force and effect as the originals.

12 DISCIPLINARY ORDER

13 In consideration of the foregoing admissions and stipulations, the parties agree
14 that the Board may, without further notice or formal proceeding, issue and enter the following
15 Disciplinary Order:

16 IT IS HEREBY ORDERED that License No. RPH 22900 issued to Respondent
17 Howard Melnikoff is revoked. However, the revocation is stayed and Respondent is placed on
18 probation for five (5) years on the following terms and conditions.

19 1. **Obey All Laws.** Respondent shall obey all state and federal laws and
20 regulations substantially related to or governing the practice of pharmacy.

21 Respondent shall report any of the following occurrences to the Board, in
22 writing, within 72 hours of such occurrence:

- 23 • an arrest or issuance of a criminal complaint for violation of any provision of
- 24 the Pharmacy Law, state and federal food and drug laws, or state and federal
- 25 controlled substances laws
- 26 • a plea of guilty or nolo contendere in any state or federal criminal proceeding
- 27 to any criminal complaint, information or indictment
- 28 • a conviction of any crime

1 discipline, citation, or other administrative action filed by any state and federal
2 agency which involves Respondent's license or which is related to the practice
3 of pharmacy or the manufacturing, obtaining, handling or distribution or billing
4 or charging for any drug, device or controlled substance.

5 2. **Reporting to the Board.** Respondent shall report to the Board
6 quarterly. The report shall be made either in person or in writing, as directed. Respondent
7 shall state under penalty of perjury whether there has been compliance with all the terms and
8 conditions of probation. If the final probation report is **not** made as directed, probation shall
9 be extended automatically until such time as the final report is made and accepted by the
10 Board.

11 3. **Interview with the Board.** Upon receipt of reasonable notice,
12 Respondent shall appear in person for interviews with the Board upon request at various
13 intervals at a location to be determined by the Board. Failure to appear for a scheduled
14 interview without prior notification to Board staff shall be considered a violation of probation.

15 4. **Cooperation with Board Staff.** Respondent shall cooperate with the
16 Board's inspectional program and in the Board's monitoring and investigation of Respondent's
17 compliance with the terms and conditions of his probation. Failure to comply shall be
18 considered a violation of probation.

19 5. **Continuing Education.** Respondent shall provide evidence of efforts
20 to maintain skill and knowledge as a pharmacist as directed by the Board.

21 6. **Notice to Employers.** Respondent shall notify all present and
22 prospective employers of the decision in case number 2947 and the terms, conditions and
23 restrictions imposed on Respondent by the decision. Within 30 days of the effective date of
24 this decision, and within 15 days of Respondent undertaking new employment, Respondent
25 shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in
26 writing acknowledging the employer has read the decision in case number 2947.

27 If Respondent works for or is employed by or through a pharmacy employment
28 service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at

1 every pharmacy of the and terms conditions of the decision in case number 2947 in advance
2 of the Respondent commencing work at each pharmacy.

3 "Employment" within the meaning of this provision shall include any full-time, part-
4 time, temporary, relief or pharmacy management service as a pharmacist, whether the
5 Respondent is considered an employee or independent contractor.

6 **7. No Preceptorships, Supervision of Interns, Being Pharmacist-in-**
7 **Charge (PIC), or Serving as a Consultant.** Respondent shall not supervise any intern
8 pharmacist or perform any of the duties of a preceptor, nor shall Respondent be the
9 pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in this
10 order.

11 **8. Reimbursement of Board Costs.** Respondent shall pay to the Board
12 its costs of investigation and prosecution in the amount of \$ 4,011.75. Respondent shall be
13 permitted to make payments on a quarterly basis.

14 The filing of bankruptcy by Respondent shall not relieve Respondent of his
15 responsibility to reimburse the Board its costs of investigation and prosecution.

16 **9. Probation Monitoring Costs.** Respondent shall pay the costs
17 associated with probation monitoring as determined by the Board each and every year of
18 probation. Such costs shall be payable to the Board at the end of each year of probation.
19 Failure to pay such costs shall be considered a violation of probation.

20 **10. Status of License.** Respondent shall, at all times while on probation,
21 maintain an active current license with the Board, including any period during which
22 suspension or probation is tolled.

23 If Respondent's license expires or is cancelled by operation of law or
24 otherwise, upon renewal or reapplication, Respondent's license shall be subject to all terms
25 and conditions of this probation not previously satisfied.

26 **11. License Surrender while on Probation/Suspension.** Following the
27 effective date of this decision, should Respondent cease practice due to retirement or health,
28 or be otherwise unable to satisfy the terms and conditions of probation, Respondent may

1 tender his license to the Board for surrender. The Board shall have the discretion whether to
2 grant the request for surrender or take any other action it deems appropriate and reasonable.
3 Upon formal acceptance of the surrender of the license, Respondent will no longer be subject
4 to the terms and conditions of probation.

5 Upon acceptance of the surrender, Respondent shall relinquish his pocket
6 license to the Board within 10 days of notification by the Board that the surrender is accepted.
7 Respondent may not reapply for any license from the Board for three years from the effective
8 date of the surrender. Respondent shall meet all requirements applicable to the license sought
9 as of the date the application for that license is submitted to the Board.

10 **12. Notification of Employment/Mailing Address Change.** Respondent
11 shall notify the Board in writing within 10 days of any change of employment. Said
12 notification shall include the reasons for leaving and/or the address of the new employer,
13 supervisor or owner and work schedule if known. Respondent shall notify the Board in
14 writing within 10 days of a change in name, mailing address or phone number.

15 **13. Tolling of Probation.** Should Respondent, regardless of residency, for
16 any reason cease practicing pharmacy for a minimum of 40 hours per calendar month in
17 California, Respondent must notify the Board in writing within 10 days of cessation of the
18 practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time
19 shall not apply to the reduction of the probation period. It is a violation of probation for
20 Respondent's probation to remain tolled pursuant to the provisions of this condition for a
21 period exceeding three years.

22 "Cessation of practice" means any period of time exceeding 30 days in which
23 Respondent is not engaged in the practice of pharmacy as defined in Section 4052 of
24 the Business and Professions Code.

25 **14. Violation of Probation.** If Respondent violates probation in any
26 respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke
27 probation and carry out the disciplinary order which was stayed. If a petition to revoke
28 probation or an accusation is filed against Respondent during probation, the Board shall have

1 continuing jurisdiction and the period of probation shall be extended, until the petition to
2 revoke probation or accusation is heard and decided.

3 If Respondent has not complied with any term or condition of probation, the
4 Board shall have continuing jurisdiction over Respondent, and probation shall automatically
5 be extended until all terms and conditions have been satisfied or the Board has taken other
6 action as deemed appropriate to treat the failure to comply as a violation of probation, to
7 terminate probation, and to impose the penalty which was stayed.

8 15. **Completion of Probation.** Upon successful completion of probation,
9 Respondent's license will be fully restored.

10 16. **Actual Suspension - Pharmacist.** License number RPH 22900, issued
11 to Respondent is suspended from the practice of pharmacy until evaluated by the Pharmacists
12 Recovery Program (PRP) and determined safe to return to the practice of pharmacy.

13 During suspension, Respondent shall not enter any pharmacy area or any
14 portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any
15 other distributor of drugs which is licensed by the Board, or any manufacturer, or where
16 dangerous drugs and devices or controlled substances are maintained. Respondent shall not
17 practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing,
18 compounding, dispensing or patient consultation; nor shall Respondent manage, administer,
19 or be a consultant to any licensee of the Board, or have access to or control the ordering,
20 manufacturing or dispensing of dangerous drugs and devices or controlled substances.

21 Respondent shall not engage in any activity that requires the professional
22 judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of
23 pharmacy. Subject to the above restrictions, Respondent may continue to own or hold an
24 interest in any pharmacy in which he holds an interest at the time this decision becomes
25 effective unless otherwise specified in this order.

26 17. **Rehabilitation Program - Pharmacists Recovery Program (PRP).**
27 Within 30 days of the effective date of this decision, Respondent shall contact the Pharmacists
28 Recovery Program for evaluation and shall successfully participate in and complete the

1 treatment contract and any subsequent addendums as recommended and provided by the PRP
2 and as approved by the Board. The costs for PRP participation shall be borne by the
3 Respondent.

4 If Respondent is currently enrolled in the PRP, said participation is now
5 mandatory and is no longer considered a self-referral under Business and Professions Code
6 section 4363, as of the effective date of this decision. Respondent shall successfully
7 participate in and complete his current contract and any subsequent addendums with the PRP.
8 Probation shall be automatically extended until Respondent successfully completes his
9 treatment contract. Any person terminated from the program shall be automatically
10 suspended upon notice by the Board. Respondent may not resume the practice of pharmacy
11 until notified by the Board in writing. The Board shall retain jurisdiction to institute action to
12 terminate probation for any violation of this term.

13 **18. Random Drug Screening.** Respondent, at his own expense, shall
14 participate in random testing, including but not limited to biological fluid testing (urine,
15 blood), breathalyzer, hair follicle testing, or a drug screening program approved by the Board.
16 The length of time shall be for the entire probation period and the frequency of testing will be
17 determined by the Board. At all times Respondent shall fully cooperate with the Board, and
18 shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics,
19 hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as
20 directed shall constitute a violation of probation. Any confirmed positive drug test shall result
21 in the immediate suspension of practice by Respondent. Respondent may not resume the
22 practice of pharmacy until notified by the Board in writing.

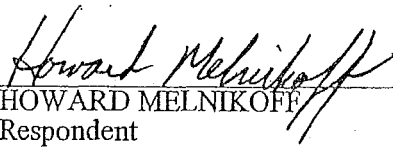
23 **19. Abstain from Drugs and Alcohol Use.** Respondent shall completely
24 abstain from the possession or use of alcohol, controlled substances, dangerous drugs and
25 their associated paraphernalia except when the drugs are lawfully prescribed by a licensed
26 practitioner as part of a documented medical treatment. Upon request of the Board,
27 Respondent shall provide documentation from the licensed practitioner that the prescription
28 was legitimately issued and is a necessary part of the treatment of the Respondent.

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ACCEPTANCE

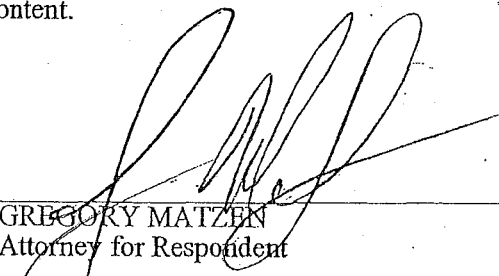
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Gregory Matzen. I understand the stipulation and the effect it will have on my License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

DATED: 10/1/07


HOWARD MELNIKOFF
Respondent

I have read and fully discussed with Respondent Howard Melnikoff the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 9/26/07


GREGORY MATZEN
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board.

DATED: 10/17/07

EDMUND G. BROWN JR., Attorney General
of the State of California

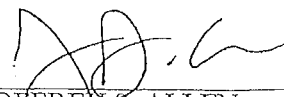

GEOFFREY S. ALLEN
Deputy Attorney General
Attorneys for Complainant

Exhibit A
Accusation No. 2947

ORIGINAL

1 BILL LOCKYER, Attorney General
of the State of California
2 GEOFFREY S. ALLEN, State Bar No. 193338
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 324-5341
Facsimile: (916) 327-8643
6 E-mail: Geoffrey.Allen@doj.ca.gov

7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2947

12 **HOWARD MELNIKOFF**
13 935 Raysilva Circle
Stockton, California 95206

OAH No.

A C C U S A T I O N

14 Pharmacist License No. RPH 22900

15 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Virginia K. Herold (Complainant) brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Pharmacy, Department of
21 Consumer Affairs.

22 2. On or about April 8, 1963, the Board of Pharmacy issued Pharmacist
23 License Number RPH 22900 (License) to Howard Melnikoff (Respondent). The License
24 was in full force and effect at all times relevant to the charges brought herein and will expire
25 on July 31, 2007, unless renewed.

26 **JURISDICTIONAL AND STATUTORY PROVISIONS**

27 3. This Accusation is brought before the Board of Pharmacy (Board),
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 4300 of the Code states, in pertinent part:

3 (a) Every license issued may be suspended or revoked.

4 (b) The board shall discipline the holder of any license issued by the
5 board, whose default has been entered or whose case has been heard by the board
6 and found guilty, by any of the following methods:

7 (1) Suspending judgment.

8 (2) Placing him or her upon probation.

9 (3) Suspending his or her right to practice for a period not
10 exceeding one year.

11 (4) Revoking his or her license.

12 (5) Taking any other action in relation to disciplining him or her as
13 the board in its discretion may deem proper.

14

15 (e) The proceedings under this article shall be conducted in accordance
16 with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
17 Government Code, and the board shall have all the powers granted therein. The
18 action shall be final, except that the propriety of the action is subject to review by
19 the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

20 5. Section 4301 of the Code states, in pertinent part:

21 The board shall take action against any holder of a license who is guilty of
22 unprofessional conduct or whose license has been procured by fraud or
23 misrepresentation or issued by mistake. Unprofessional conduct shall include, but
24 is not limited to, any of the following:

25

26 (f) The commission of any act involving moral turpitude, dishonesty,
27 fraud, deceit, or corruption, whether the act is committed in the course of relations
28 as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

.....

(j) The violation of any of the statutes of this state or of the United
States regulating controlled substances and dangerous drugs.

.....

(o) Violating or attempting to violate, directly or indirectly, or
assisting in or abetting the violation of or conspiring to violate any provision or
term of this chapter or of the applicable federal and state laws and regulations
governing pharmacy, including regulations established by the board.

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1 6. California Code of Regulations, title 16, (CCR) section 1714, subdivision

2 (d) states:

3 (d) Each pharmacist while on duty shall be responsible for the security
4 of the prescription department, including provisions for effective control against
5 theft or diversion of dangerous drugs and devices, and records for such drugs and
6 devices. Possession of a key to the pharmacy where dangerous drugs and
7 controlled substances are stored shall be restricted to a pharmacist.

6 7. Section 4059, subd. (a), of the Code states:

7 (a) A person may not furnish any dangerous drug, except upon the
8 prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
9 naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
10 dangerous device, except upon the prescription of a physician, dentist, podiatrist,
11 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

10 8. Section 4060 of the Code states:

11 No person shall possess any controlled substance, except that furnished to
12 a person upon the prescription of a physician, dentist, podiatrist, veterinarian, or
13 naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug
14 order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse
15 practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
16 Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist
17 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
18 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
19 section shall not apply to the possession of any controlled substance by a
20 manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian,
21 naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician
22 assistant, when in stock in containers correctly labeled with the name and address
23 of the supplier or producer.

18 Nothing in this section authorizes a certified nurse-midwife, a nurse
19 practitioner, a physician assistant, or a naturopathic doctor, to order his or her
20 own stock of dangerous drugs and devices.

20 9. Health and Safety Code section 11170 states, "No person shall prescribe,
21 administer, or furnish a controlled substance for himself."

22 10. Health and Safety Code section 11173, subd. (a) states:

23 (a) No person shall obtain or attempt to obtain controlled substances,
24 or procure or attempt to procure the administration of or prescription for
25 controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2)
26 by the concealment of a material fact.

26 11. Health and Safety Code section 11350, subd. (a) states:

27 (a) Except as otherwise provided in this division, every person who
28 possesses (1) any controlled substance specified in subdivision (b) or (c), or
paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14),
(15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or

1 (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any
2 controlled substance classified in Schedule III, IV, or V which is a narcotic drug,
3 unless upon the written prescription of a physician, dentist, podiatrist, or
veterinarian licensed to practice in this state, shall be punished by imprisonment
in the state prison.

4 12. Section 125.3 of the Code states, in pertinent part, that the Board may
5 request the administrative law judge to direct a licentiate found to have committed a violation or
6 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
7 and enforcement of the case.

8 **FIRST CAUSE FOR DISCIPLINE**

9 (Failure to Maintain Pharmacy Security)

10 13. Respondent is subject to disciplinary action under section 4301, subd. (o)
11 and CCR section 1714 in that Respondent, while employed as a pharmacist-in-charge at a Rite
12 Aid pharmacy, experienced significant losses of a Scheduled III controlled substance, namely
13 acetaminophen/codeine 325/30 mg.^{1/}

14 **SECOND CAUSE FOR DISCIPLINE**

15 (Unprofessional Conduct)

16 14. Respondent is subject to disciplinary action under section 4301, subd. (f)
17 in that Respondent, while employed as a pharmacist-in-charge at a Rite Aid pharmacy,
18 committed acts involving moral turpitude, dishonest, fraud, deceit, or corruption by unlawfully
19 taking a Scheduled III controlled substance, namely acetaminophen/codeine 325/30 mg., from the
20 pharmacy for personal use between December of 2004 and January of 2005.

21 15. Respondent is subject to disciplinary action under section 4301, subd. (f)
22 in that Respondent, while employed as a pharmacist-in-charge at a Rite Aid pharmacy,
23 committed acts involving moral turpitude, dishonest, fraud, deceit, or corruption by unlawfully
24 taking a Dangerous Drug, namely Carisoprodal^{2/}, from the pharmacy for personal use between
25

26 _____
27 1. Acetaminophen/codeine 325/30 mg. is a Schedule III controlled substance according to
Health and Safety Code section 11056, subd. (e).

28 2. Carisoprodal a.k.a. soma is a Dangerous Drug pursuant to Code section 4022.

1 December of 2004 and January of 2005.

2 **THIRD CAUSE FOR DISCIPLINE**

3 (Violation of Controlled Substance or Dangerous Drug Statutes)

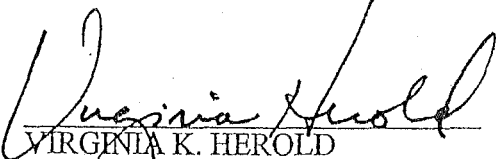
4 16. Respondent is subject to disciplinary action under section 4301, subd. (j)
5 in that Respondent violated the statutes of this state regulating controlled substances and
6 dangerous drugs. Respondent's actions detailed in paragraphs 14 and 15 above violated Code
7 sections 4059, subd. (a), and 4060; and Health and Safety Code sections 11170, 11173, subd. (a),
8 and 11350, subd. (a).

9 **PRAYER**

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein
11 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

- 12 1. Revoking or suspending Pharmacist License Number RPH 22900, issued
13 to Howard Melnikoff.
- 14 2. Ordering Howard Melnikoff to pay the Board of Pharmacy the reasonable
15 costs of the investigation and enforcement of this case, pursuant to Business and Professions
16 Code section 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: 10/31/06

19 
20 VIRGINIA K. HEROLD
21 Interim Executive Officer
22 Board of Pharmacy
23 Department of Consumer Affairs
24 State of California
25 Complainant

23 SA2005104966

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1 BILL LOCKYER, Attorney General
of the State of California
2 ARTHUR D. TAGGART
Lead Supervising Deputy Attorney General
3 GEOFFREY S. ALLEN, State Bar No. 193338
Deputy Attorney General
4 California Department of Justice
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5341
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12 In the Matter of the Accusation Against:
13 **HOWARD MELNIKOFF**
935 Raysilva Circle
14 Stockton, California 95206
15 Pharmacist License No. RPH 22900
16 Respondent.

Case No. 2947
REQUEST FOR DISCOVERY
[Gov. Code § 11507.6]

18 TO RESPONDENT:

19 Under section 11507.6 of the Government Code of the State of California, parties
20 to an administrative hearing, including the Complainant, are entitled to certain information
21 concerning the opposing party's case. A copy of the provisions of section 11507.6 of the
22 Government Code concerning such rights is included among the papers served.

23 PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU
24 ARE HEREBY REQUESTED TO:

- 25 1. Provide the names and addresses of witnesses to the extent known to the
26 Respondent, including, but not limited to, those intended to be called to testify at the hearing, and
27 2. Provide an opportunity for the Complainant to inspect and make a copy of any of
28 the following in the possession or custody or under control of the Respondent:

1 a. A statement of a person, other than the Respondent, named in the initial
2 administrative pleading, or in any additional pleading, when it is claimed that the act or
3 omission of the Respondent as to this person is the basis for the administrative
4 proceeding;

5 b. A statement pertaining to the subject matter of the proceeding made by any
6 party to another party or persons;

7 c. Statements of witnesses then proposed to be called by the Respondent and
8 of other persons having personal knowledge of the acts, omissions or events which are the
9 basis for the proceeding, not included in (a) or (b) above;

10 d. All writings, including but not limited to reports of mental, physical and
11 blood examinations and things which the Respondent now proposes to offer in evidence;

12 e. Any other writing or thing which is relevant and which would be
13 admissible in evidence, including but not limited to, any patient or hospital records
14 pertaining to the persons named in the pleading;

15 f. Investigative reports made by or on behalf of the Respondent pertaining to
16 the subject matter of the proceeding, to the extent that these reports (1) contain the names
17 and addresses of witnesses or of persons having personal knowledge of the acts,
18 omissions or events which are the basis for the proceeding, or (2) reflect matters
19 perceived by the investigator in the course of his or her investigation, or (3) contain or
20 include by attachment any statement or writing described in (a) to (e), inclusive, or
21 summary thereof.

22 For the purpose of this Request for Discovery, "statements" include written
23 statements by the person, signed, or otherwise authenticated by him or her, stenographic,
24 mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person,
25 and written reports or summaries of these oral statements.

26 YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for
27 Discovery should be deemed to authorize the inspection or copying of any writing or thing which
28 is privileged from disclosure by law or otherwise made confidential or protected as attorney's

1 work product.

2 Your response to this Request for Discovery should be directed to the undersigned
3 attorney for the Complainant at the address on the first page of this Request for Discovery **within**
4 **30 days after service** of the Accusation.

5 Failure without substantial justification to comply with this Request for Discovery
6 may subject the Respondent to sanctions pursuant to sections 11507.7 and 11455.10 to 11455.30
7 of the Government Code.

8 DATED: 12/7/06

9 BILL LOCKYER, Attorney General
10 of the State of California

11 
12 _____
13 GEOFFREY S. ALLEN
14 Deputy Attorney General

15 Attorneys for Complainant

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1 BILL LOCKYER, Attorney General
of the State of California
2 ARTHUR D. TAGGART
Lead Supervising Deputy Attorney General
3 GEOFFREY S. ALLEN, State Bar No. 193338
Deputy Attorney General
4 California Department of Justice
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5341
Facsimile: (916) 327-8643

7
8 Attorneys for Complainant

9
10 **BEFORE THE**
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:
13 **HOWARD MELNIKOFF**
935 Raysilva Circle
14 Stockton, California 95206
15 Pharmacist License No. RPH 22900
16 Respondent.

Case No. 2947
STATEMENT TO RESPONDENT
[Gov. Code §§ 11504, 11505(b)]

17
18 TO RESPONDENT:
19 Enclosed is a copy of the Accusation that has been filed with the Board of
20 Pharmacy of the Department of Consumer Affairs (Board), and which is hereby served on you.
21 Unless a written request for a hearing signed by you or on your behalf is delivered
22 or mailed to the Board, represented by Deputy Attorney General Geoffrey S. Allen, within fifteen
23 (15) days after a copy of the Accusation was personally served on you or mailed to you, you will
24 be deemed to have waived your right to a hearing in this matter and the Board may proceed upon
25 the Accusation without a hearing and may take action thereon as provided by law.
26 The request for hearing may be made by delivering or mailing one of the enclosed
27 forms entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided
28 in section 11506 of the Government Code, to

1 **Geoffrey S. Allen**
2 **Deputy Attorney General**
3 **1300 I Street, Suite 125**
4 **P.O. Box 944255**
5 **Sacramento, California 94244-2550.**

6 You may, but need not, be represented by counsel at any or all stages of these
7 proceedings.

8 The enclosed Notice of Defense, if signed and filed with the Board, shall be
9 deemed a specific denial of all parts of the Accusation, but you will not be permitted to raise any
10 objection to the form of the Accusation unless you file a further Notice of Defense as provided in
11 section 11506 of the Government Code within fifteen (15) days after service of the Accusation
12 on you.

13 If you file any Notice of Defense within the time permitted, a hearing will be held
14 on the charges made in the Accusation.

15 The hearing may be postponed for good cause. If you have good cause, you are
16 obliged to notify the Office of Administrative Hearings, Attn: General Jurisdiction, 2349
17 Gateway Oaks, Suite 200, Sacramento, CA 95833-4231, within ten (10) working days after you
18 discover the good cause. Failure to notify the Office of Administrative Hearings within ten (10)
19 days will deprive you of a postponement.

20 Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are
21 enclosed.

22 If you desire the names and addresses of witnesses or an opportunity to inspect
23 and copy the items mentioned in section 11507.6 of the Government Code in the possession,
24 custody or control of the Board you may send a Request for Discovery to the above designated
25 Deputy Attorney General.

26 **NOTICE REGARDING STIPULATED SETTLEMENTS**

27 It may be possible to avoid the time, expense and uncertainties involved in an
28 administrative hearing by disposing of this matter through a stipulated settlement. A stipulated
settlement is a binding written agreement between you and the government regarding the matters
charged and the discipline to be imposed. Such a stipulation would have to be approved by the

1 Board of Pharmacy but, once approved, it would be incorporated into a final order.

2 Any stipulation must be consistent with the Board's established disciplinary
3 guidelines; however, all matters in mitigation or aggravation will be considered. A copy of the
4 Board's Disciplinary Guidelines will be provided to you on your written request to the state
5 agency bringing this action.

6 If you are interested in pursuing this alternative to a formal administrative hearing,
7 or if you have any questions, you or your attorney should contact Deputy Attorney General
8 Geoffrey S. Allen at the earliest opportunity.

9 *****

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**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

HOWARD MELNIKOFF
935 Raysilva Circle
Stockton, California 95206

Pharmacist License No. RPH 22900

Respondent.

Case No. 2947

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

DATED: _____

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

Check appropriate box:

- I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

- I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

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**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

HOWARD MELNIKOFF
935 Raysilva Circle
Stockton, California 95206

Pharmacist License No. RPH 22900

Respondent.

Case No. 2947

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

DATED: _____

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

Check appropriate box:

- I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

- I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

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**COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6 AND 11507.7
PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505**

SECTION 11507.5: Exclusivity of discovery provisions

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

SECTION 11507.6: Request for discovery

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

SECTION 11507.7: Petition to compel discovery; Order; Sanctions

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL

(Separate Mailings)

Case Name: In the Matter of the Accusation Against: Howard Melnikoff
Board of Pharmacy Case No.: 2947

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

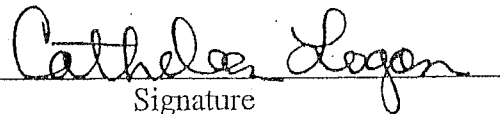
On December 8, 2006, I served the attached **Accusation, Statement to Respondent, Request for Discovery, Notice of Defense (2 copies) and Government Code Sections 11507.5, 11507.6 and 11507.7** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **Accusation, Statement to Respondent, Request for Discovery, Notice of Defense (2 copies) and Government Code Sections 11507.5, 11507.6 and 11507.7** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Howard Melnikoff
935 Raysilva Circle
Stockton, California 95206

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 8, 2006, at Sacramento, California.

Catheleen Logan
Declarant


Signature

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Howard Melinkoff
935 Raysilva Circle
Stockton, California 95206

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee
x Charles [Signature]

B. Received by (Printed Name) C: Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) **7003 1680 0002 3841 8427**

7003 1680 0000 2000 3841 8427

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Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To	Howard Melnikoff
Street, Apt. No., or PO Box No.	935 Ransilva Circle
City, State, ZIP+4	Stockton, CA 95206